In the Supreme Court
OF THE
United States

OCTOBER TERM, 1978

NO. 78-1881

CARPENTERS PENSION TRUST FUND
FOR NORTHERN CALIFORNIA,
Appellant,

VS.

CHRISTINE CAMPA, *Appellee*
and
FERNANDO S. CAMPA, *Appellee,*
JOAN CLARE DURKIN, *Appellee*
and
JAMES PATRICK DURKIN, *Appellee,*
CAROLYN J. BRYANT, *Appellee.*

On Appeal From
The Court of Appeal of the State of California,
First Appellate District

APPELLANT'S BRIEF IN OPPOSITION TO MOTION TO AFFIRM

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PRELIMINARY STATEMENT

Appellees have misread the brief of the Secretary of Labor, Amicus Curiae, in *Stone v. Stone* pending on appeal before the United States Court of Appeal for the Ninth Circuit, No. 78-2313, and have erroneously argued to this Court that the United States Department of Labor "fully supports the State Appeals Court decision herein" (Motion, p. 4). The fact is that the brief of the Secretary of

Labor states a position in direct conflict with the decision of the California Court of Appeal in the cases before this Court.

In each of these cases the pension rights affected by the order of the California court are prospective only and are not in pay status. The clearly stated position of the Secretary of Labor is that ERISA preempts such orders, and the community property law on which they are based, insofar as they relate to employee pension benefit plans covered by ERISA.

THE OFFICIALLY STATED POSITION OF THE SECRETARY OF LABOR IS THAT ERISA HAS PREEMPTED THE CALIFORNIA COMMUNITY PROPERTY LAW, EXCEPT IN CASES WHERE PENSION RIGHTS ARE IN PAY STATUS

The amicus curiae brief of the Secretary of Labor in the *Stone* case is reprinted in full in BNA Pension Reporter No. 221, January 9, 1979, at pp. R-7-14. The brief states, in pertinent part, as follows:*

"Introduction

> The Secretary of Labor submits this brief, *amicus curiae*, to express his views on whether and to what extent the Employee Retirement Income Security Act of 1974 ('ERISA') permits the enforcement of a state court judgment ordering an employee benefit plan to make benefit payments to a participant's former spouse in satisfaction of claims under state community property law.
>
> This question requires the resolution of two competing policies as enunciated by state and federal law. On

*Emphasis in bold face has been added.

> the one hand, California, through its community property system has, in part, undertaken to resolve problems relating to the economic security of its citizens and to recognize the contribution made by both partners in a marriage to the economic achievement of the marital enterprise. From this perspective, one can hardly fail to be sympathetic with the plaintiff here, and with that large class of persons, the spouses of plan participants, who are similarly situated. Many of them are women who have not participated directly in the private sector labor force, who may have no ready access to retirement income security except through reliance on the spouse's pension, and whose lot would be greatly improved by direct access to the spouse's plan.
>
> . . . .
>
> On the other hand, the Secretary has a responsibility under ERISA to give effect to Congressional intent to promote the growth and development of private pension plans and to assure uniform national regulation of such plans. Section 514 of ERISA, which preempts all state laws that 'relate to' employee benefit plans, plays a critical role in achieving those objectives. As we show below, the broad preemption provision was consciously selected to advance those goals. Any decision—such as the decision below—which undermines the breadth of the federal preemptive scheme has a potentially destructive impact on plans and jeopardizes a key element of the Congressional intent in enacting ERISA.
>
> The Secretary believes that the starting point in this case is an analysis of the general preemption section of ERISA, and that the court below erred in holding that that section did not preempt state community property law. In our view, the plain language of Section 514 re-

futes the district court's conclusion since community property law 'relates to' plans when it affects their administration or operation. Such state law is therefore preempted by ERISA.

The impact on a plan of the application of community property law in the circumstances presented by this particular case may not, at first glance, seem great. Here, the enforcement of the previous judgment against the pension plan only requires the plan to write two checks instead of one to effectuate the order to divide benefit payments relating to a participant who is in pay status. But the principles of community property apply throughout marriage as well as at divorce. California property law would recognize an ongoing community interest in the plan in non-participant spouses. ERISA on the other hand contemplates that the interests in a plan exist in and are exercisable by statutorily defined participants and beneficiaries. Spouses of employee-participants, even in community property jurisdictions, are not within this specified class of persons protected under ERISA. The application of state community property law principles can be expected to have a variety of substantial impacts on plans, some of which are more fully discussed below. For this reason, the Secretary believes that to the extent a non-participant spouse's interest is derived only from state property law, that interest is unenforceable against an employee benefit plan, for state property law must yield to the broad preemption language of Section 514.

The statute, however, must be read as a whole. There are two virtually identical sections of ERISA (Sections 206(d) and 1021(c)) which generally provide that a participant's pension benefit may not be assigned or alienated. The United States, on behalf of the Secre-

tary of Labor and the Secretary of the Treasury, has taken the position in a recent case that Congress intended an implied exception in these anti-assignment provisions to allow the enforcement of spousal and child support orders against a plan. This exception to the anti-assignment provisions allows a former spouse to attach the pension of a participant **in pay status**.

The present case can be viewed as presenting the question whether this implied exception should be expanded to allow attachment under similar circumstances to enforce a community property decree. Although the legal precedents applicable to this case are sparse, we have concluded that the relevant policy concerns, together with ERISA's emphasis on uniform treatment of plan participants, suggest that such an expansion would be appropriate. Accordingly, we submit that the decision of the district court should be affirmed on the basis of an implied exception to the anti-assignment provisions of ERISA **applicable to the type of judgment involved in this case**. In so holding, however, we urge the Court to make clear that Section 514 of ERISA bars the importation of state community property law principles into the administration and operation of benefit plans.

* * * *

Argument

I. Section 514 of ERISA Preempts California Community Property Law Insofar as It Relates to or Its Application Would Affect the Administration or Operation of Employee Benefit Plans Covered by the Act

A. The Scope of Section 514

The Supreme Court has recently reaffirmed the presumably uncontroversial proposition that '[t]he start-

ing point in every case involving construction of a statute is the language itself'; and where the words of a statute 'are clear and unequivocal on their face', those words are controlling. The language of Section 514 provides a clear articulation of Congress' intent to preempt all state laws relating to ERISA-covered employee benefit plans except those laws described in subsections (b)(2)(A) and (b)(4). There is little room to proceed beyond that 'starting point'. But even if we do proceed, we find that any doubt as to the scope of Section 514 is dispelled by the legislative history of ERISA generally and Section 514 specifically.

ERISA mandated a series of reforms in the design, administration and operation of private pension plans, imposing national standards relating to participation, vesting, funding, accrual of benefits, and fiduciary responsibility. Congress was aware, of course, that these reforms could encourage plan sponsors to terminate or curtail pension benefit programs. As the Report of the Senate Committee on Finance noted:

> '[S]ince these plans are voluntary on the part of the employer and both the institution of new pension plans and increases in benefits depend upon employer willingness to participate or expand a plan, it is necessary to take into account additional costs from the standpoint of the employer. If employers respond to more comprehensive coverage, vesting and funding rules by decreasing benefits under existing plans or slowing the rate of formation of new plans, little if anything would be gained from the standpoint of securing broader use of employee pensions and related plans.'

Sensitive to the voluntary aspects of the private benefit plan system, Congress determined to lessen

the disruptive effect of the new federal law by saving plans from possibly inconsistent or duplicative laws of the individual states. The legislative history of Section 514 describes this purpose with clarity. Indeed, the present version of Section 514 shows that Congress consciously rejected proposals for preemption provisions of narrower scope. While the earlier proposals had limited federal preemption to subjects covered by the Act, the Conference Committee enlarged the provision to preempt all state laws relating to *plans* subject to ERISA. As Senator Javits, a sponsor of the law explained:

> 'Both the House and Senate bills provided for the preemption of State law, but . . . defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation. . . .
>
> '[O]n balance, the emergence of a comprehensive and pervasive Federal interest and the interest of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit programs.'

* * * *

Two other cases supporting an expansive reading of section 514 were decided by the same court (Renfrew, J.) that considered the case below. In *Hewlett-Packard Co.* v. *Barnes,* 425 F. Supp. 1294 (1977), *aff'd,* 571 F.2d 502 (9th Cir. 1978), *cert. den.* ..... U.S. ..... (October 2, 1978), the court held that a California law regulating certain welfare plans was preempted by ERISA. And in *Standard Oil Co.* v. *Agsalud,* 442 F. Supp. 695 (1977), *appeal docketed,* No. 78-1095, the court simi-

larly held that a Hawaii act mandating coverage of state workers by a comprehensive pre-paid health plan was preempted by ERISA.

The court below undertook to distinguish these cases by distinguishing between those state laws which 'affect' plans and those laws which 'relate to' them within the meaning of Section 514 (R 132). It acknowledged that California community property law affects plans, but then reasoned that 'state regulation of benefit plans is not nearly as well established as state regulation of community property' (R 133) and that '[t]he intended beneficiaries of the California community property laws would be placed at a significantly greater disadvantage by preemption' than the beneficiaries of the state law involved in *Agsalud*. Thus, the court concluded that:

> 'It is more reasonable to believe that Congress was willing to tolerate the adverse consequences of preemption of state health insurance laws than the consequences of preemption of state community property laws' (R 134).

We submit that this analysis is at odds with the statutory language and legislative history and jeopardizes the certainty that Congress intended to establish in this area. Preemption cannot depend on the degree of 'establishment' of a particular state law or the amount of protection that law affords its beneficiaries. Such determinations are inherently subjective, and more significantly, they are not the criteria Congress chose to employ in Section 514. Congress provided that *all* state laws are preempted by ERISA and it is not open to the courts to choose candidates for preemption on the basis of subjective value judgments. In *Agsalud*, Judge Renfrew properly warned against the introduction of subjective considerations into the preemption

analysis. He stated, in terms that strikingly bear upon this case (442 F.Supp. at 707):

> 'The starting point is necessarily the language of the statute. In any normal meaning, the Hawaii Act relates to employee benefit plans. Laws relating to benefits of employee benefit plans relate to those plans as much as laws relating to their administration. There is simply no basis in the language of § 514(a) for distinguishing between types of state laws all of which "relate to" employee benefit plans. When Congress says "any and all State laws," courts cannot conclude that Congress meant to say "some but not all state law."'

* * * *

B. California Community Property Law Relates to Employee Benefit Plans.

* * * *

As noted, ERISA represents a delicate balance between the effective regulation of plans and the policy to encourage the voluntary formation and continuation of those plans. The various standards set by the act in the areas of funding, vesting, participation and fiduciary conduct, as well as in the specification of the class of persons entitled to claim its protections, are tailored to maintain the necessary balance. Under the Act, statutorily defined 'participants' and 'beneficiaries' are given various rights. Sections 104 and 105 of the Act (29 U.S.C. 1024 and 1025) require plan administrators to disclose certain information to participants and beneficiaries; Section 205 (29 U.S.C. 1055) allows a participant to choose a joint and survivor annuity; Section 404 (29 U.S.C. 1104) commands a fiduciary of a plan to act 'solely in the interest of the participants and beneficiaries', and Section 502 (29 U.S.C. 1132) authorizes suit under ERISA by participants and beneficiaries.

Present or former spouses of employees who might be deemed to have an interest in the employees' benefits by virtue of state community property law are *not* participants or beneficiaries within the statutory definitions of those terms. Under ERISA, their community property interests need not and should not generally be recognized by plans; and they cannot be generally authorized to utilize or rely on the provisions of ERISA relating solely to participants and beneficiaries. In other words, to the extent state law is used to enlarge the class of persons whose interests are protected by ERISA, it must be preempted by the Act or risk upsetting the careful balance which resulted from Congress' compromises between needed benefits for employees and undue burdens on plan fiduciaries, administrators and sponsors.

Community property law if not preempted might also provide a means to the non-participant spouse to interfere with an employee's rights under his plan. Prior to the passage of ERISA, employee benefit plans provided a variety of benefits for participants. Early retirement options, choice of form of benefit, choices of beneficiary and a host of other options intended to allow a participant to tailor his plan benefit to individual needs were provided by many plans. ERISA does not circumscribe this variety except for setting certain minimum standards; on the contrary, it supports a participant's rights by imposing a duty on fiduciaries to act in accordance with plan provisions and by making it a federal offense to interfere with those rights. *See* 29 U.S.C. 1104(a)(1)(D) and 1140.

California and the other community property states have various provisions defining the rights of spouses in managing the community's property. The exercise

of these rights may be inconsistent with federally guaranteed participant rights. For example, Section 205 of ERISA, 29 U.S.C. 1055, provides that if a plan offers its retirement benefit in the form of an annuity, it must allow the participant to elect a joint and survivor annuity. Under this option, the participant may choose to receive an actuarially reduced annuity during his or her own lifetime in exchange for an annuity to be paid to his or her surviving spouse. In the case of a participant who chooses this option to protect a second spouse, the first spouse (who under state law would have a recognized community property interest in the pension payment) will be adversely affected by the actuarial reduction in the amount of the pension benefit payment. But under ERISA, the participant must be permitted the election and, despite any "property" interest, the first spouse must be precluded from interfering with the participant's choice.

Finally, the Secretary wishes to emphasize that the effect of the Court's decision will necessarily be felt far beyond the confines of this case, which involves a participant who is already in pay status under the plan. State courts are vested with wide discretion in fashioning equitable remedies in divorce, and may, absent clear guidance as to the scope of preemption, be drawn to exercise that discretion in such a way as to give a non-participant spouse rights which are more immediate, or less subject to contingency, than those of the participant. For example, although it is permissible for a state court to compute the value of a participant's right or expectancy of a pension benefit in determining the size of the community property 'pot' to be divided, it would be intolerable under the ERISA scheme for a court to order the immediate payment of that value in order to fully effectuate a com-

munity property settlement. Such orders would endanger the soundness and possibly the solvency of pension plans and threaten the financial well-being of all participants.

II. The Judgment of the District Court Should Be Affrmed on the Basis of an Implied Exception to the Anti-Assignment Provisions of ERISA for the Enforcement of a State Court Decree Attaching the Benefits of a Participant in Pay Status to Satisfy a Claim Under State Community Property Law

* * * *

In sum, the Secretary concedes that the applicable legal precedents provide no clear answer concerning the scope of the implied exception to ERISA's anti-assignment provisions. Nevertheless, the several previously-cited support exception cases support the proposition that Congress recognized that the indirect beneficiaries of ERISA's protective provisions include members of the family of the participant. Despite the legal and economic differences between claims under community property and those for family support in the common law context, it cannot be disputed that the community property system encompasses many aspects of the social policies of family responsibility that underlie the support cases. This fact, coupled with ERISA's emphasis on uniformity, leads the Secretary to conclude that the Court should find an implied exception in the anti-assignment provisions of ERISA to allow a state court to attach the pension of a participant **in pay status** in order to enforce a community property decree.

Conclusion

For the foregoing reasons, the Secretary submits that the judgment of the district court should be affirmed on the basis that there is an implied exception in the anti-assignment provisions of ERISA for state court decrees ordering payment of a portion of a benefit based on community property claims to the spouse or former-spouse of a participant **whose pension is in pay status**. We urge the Court to further clarify that, apart from the enforcement of such a decree, ERISA preempts state community property law insofar as it may relate to employee benefit plans covered by the Act."

CONCLUSION

The distinction drawn by the Secretary of Labor between pension rights in pay status and other pension rights is of dubious validity in the context of the fiduciary duties defined in ERISA. It is difficult to conceive that Congress would have required plan fiduciaries to discharge their duties "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title [Title I]" (29 U.S.C. § 1104(a)), if state and federal courts were to be permitted to write implied exceptions into the provisions of Title I. Regardless of the merit of the Secretary's position on this subordinate issue, however, the fact that his position as it applies to the cases before this Court is in direct conflict with the decision of the California Court of Appeal is of vital concern to the Board of Trustees of the Carpenters Pension Trust Fund for Northern California. The Board cannot comply with the orders of the California courts without violating their fiduciary duties as interpreted by the Secretary of Labor.

We submit that the resolution of this impasse by this Court, which alone has the power to resolve it, presents an indisputably substantial federal question. Until this Court expresses its view on this question the California courts will continue to issue orders requiring the boards of trustees of employee pension benefit plans covered by ERISA to pay pension benefits to persons who are not participants or beneficiaries of the plan, contrary to provisions of the plan, contrary to regulations of the Secretary of the Treasury and contrary to interpretations and the officially stated position of the Secretary of Labor (Jurisdictional Statement, pp. 45-46), and such orders will continue to be affirmed on appeal (see *In re Marriage of Pilatti* (1979) 96 Cal. App. 3d 63, ... Cal. Rptr. .....).

Dated, San Francisco, California,

September 21, 1979

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